

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RAJAT MUKHERJEE

Appeal No. 2003-0038
Application 09/390,154

ON BRIEF

Before THOMAS, HAIRSTON and JERRY SMITH, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-8 and 10-20, which constitute all the claims remaining in the application.

The disclosed invention pertains to a method and apparatus for managing assets on plural Web servers.

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Representative claims 1 and 7 are reproduced as follows:

1. A computer-implemented method for managing assets on plural Web servers, comprising the acts of:

crawling the Web servers to identify assets and hyperlinks therein;

storing data representative of the assets and hyperlinks in a database; and

using the database, ensuring that when a user browser selects a hyperlink represented in the database, the user is not presented with a "file not found" message.

7. A computer system for managing assets in a data repository such as at least one Web server or at least one file system, comprising:

computer readable code means for identifying the assets and for identifying reference pointers in the assets to other assets in the data repository;

computer readable code means for determining that a reference pointer is a broken reference pointer when the reference pointer refers to an asset not present in the data repository, such that a system manager can address the broken reference pointers, wherein the data repository includes at least one file system or at least two Web servers, and the system further comprises:

computer readable code means for linking the assets to a database containing metadata representative of the assets and reference pointers, such that backups of the database automatically cause the associated assets to be backed up on the file system or Web servers.

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The examiner relies on the following references:

Monier	5,974,455	Oct. 26, 1999 (filed Dec. 13, 1995)
Astiz et al. (Astiz)	6,035,330	Mar. 07, 2000 (filed Mar. 29, 1996)

Claims 1-8 and 10-20 stand rejected under 35 U.S.C.
§ 103(a). As evidence of obviousness the examiner offers Astiz
in view of Monier.

Rather than repeat the arguments of appellant or the
examiner, we make reference to the briefs and the answer for the
respective details thereof.

OPINION

We have carefully considered the subject matter on
appeal, the rejection advanced by the examiner and the evidence
of obviousness relied upon by the examiner as support for the
rejection. We have, likewise, reviewed and taken into
consideration, in reaching our decision, the appellant's
arguments set forth in the briefs along with the examiner's
rationale in support of the rejection and arguments in rebuttal
set forth in the examiner's answer.

It is our view, after consideration of the record before
us, that the evidence relied upon and the level of skill in the
particular art would not have suggested to one of ordinary skill

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in the art the obviousness of the invention as set forth in the claims on appeal. Accordingly, we reverse.

Appellant has indicated that for purposes of this appeal the claims will stand or fall together in the following two groups: Group I has claims 1-6 and 12-20, and Group II has claims 7, 8, 10 and 11. Consistent with this indication appellant has made no separate arguments with respect to any of the claims within each group. Accordingly, all the claims within each group will stand or fall together. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Therefore, we will consider the rejection against claims 1 and 7 as representative of all the claims on appeal.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive

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at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make

in the brief have not been considered and are deemed to be waived [see 37 CFR § 1.192(a)].

With respect to representative, independent claim 1, the examiner finds that Astiz teaches the claimed invention except for the crawling step. The examiner finds that Monier teaches this step, and the examiner finds that it would have been obvious to the artisan to combine the teachings of Monier with the teachings of Astiz [answer, pages 3-4]. Appellant argues that Astiz does not teach the recitation of claim 1 that the user is not presented with a "file not found" message. Appellant notes that Astiz sets a flag to indicate that a link is broken, but appellant argues that there is nothing in Astiz that would prevent the user from getting a "file not found" message [brief, pages 3-4]. The examiner responds that Astiz can present to users the status of unavailable or unreachable and that Monier teaches a technique that presents users unavailable messages. According to the examiner, this means that Astiz and Monier teach that the user is not presented with a "file not found" message [answer, page 10]. Appellant responds that the portions of Astiz and Monier cited by the examiner fail to ensure that a user is not presented with a "file not found" message as claimed [reply brief].

We will not sustain the examiner's rejection of representative claim 1 for essentially the reasons argued by appellant in the briefs. It is not entirely clear what the examiner's position is, but it appears to be that Astiz could present the user with the message "file unavailable" or "file unreachable" as opposed to the literal message "file not found" as recited in claim 1. Claim 1, however, recites the step of "ensuring that when a user browser selects a hyperlink represented in the database, the user is not presented with a 'file not found' message." We agree with appellant that the system of Astiz cannot ensure that the message "file not found" will not be presented to the user. In our view, the user of the Astiz system could still encounter a missing hyperlink and receive the message "file not found." The examiner has not pointed to any teaching of Astiz which ensures that this message will not be presented to the user.

With respect to representative, independent claim 7, the examiner finds that Astiz teaches the claimed invention except for the data repository including at least one file system or at least two web servers. The examiner cites Monier as teaching this feature, and the examiner finds that it would have been obvious to the artisan to combine the teachings of Astiz and

Monier [answer, pages 6-7]. Appellant argues that backing up the local database in Astiz in no way causes the Web servers to be backed up as well [brief, pages 4-5]. The examiner responds that Monier teaches linking assets to a database such that backup of the database automatically causes the associated assets to be backed up on the file system or web servers [answer, pages 11-12]. Appellant responds that the examiner's arguments are incomprehensible. Appellant reasserts, however, that neither reference contemplates automatically backing up a file system or web server when the linked database is backed up as recited in claim 7 [reply brief].

We will not sustain the examiner's rejection of representative claim 7 for essentially the reasons argued by appellant in the briefs. We agree with appellant that the examiner's position with respect to claim 7 is not clear. The examiner initially relied on Astiz as teaching the claimed backup, but the examiner later referred to Monier as teaching this backup. Our review of both references finds that they are both deficient in teaching this feature of the claimed invention. Claim 7 recites that the assets of the file system or web server are backed up whenever the assets of a linked database are backed up. Although this may appear to be a relatively simple process,

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the applied prior art does not teach it. While it may be known to update a linking table when the assets of a file system or Web server are changed, there is no teaching within the applied prior art of backing up the assets on the file system or Web server when the linked database is backed up.

In summary, we have not sustained the examiner's rejection of any of the claims on appeal. Therefore, the decision of the examiner rejecting claims 1-8 and 10-20 is reversed.

REVERSED

JAMES D. THOMAS
Administrative Patent Judge

KENNETH W. HAIRSTON
Administrative Patent Judge

JERRY SMITH
Administrative Patent Judge

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